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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,
Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**JOINT STATEMENT OF ISSUES ON
OBJECTIONS TO PROOFS OF
CLAIM AND AMENDED PROOFS
OF CLAIM FILED BY PENSION
BENEFIT GUARANTY
CORPORATION**

Date of Hearing: January 24, 2008
Time of Hearing: 9:30 a.m.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

USACM Liquidating Trust (the "USACM Trust"), by its counsel, and the Pension Benefit Guaranty Corporation ("PBGC"), by its counsel, consistent with this Court's December 5, 2007 Order (Dkt. #5441) approving the parties' "Stipulation Continuing Hearing On Objections To Proofs of Claim And Amended Proofs Of Claim Filed By Pension Benefit Guaranty Corporation" (Dkt. #5420) and setting hearing for January 24, 2008 at 9:30 a.m., respectfully submits the following joint statement of issues:

1. The following legal issues have been fully briefed by the USACM Trust and the PBGC and, therefore, the parties respectfully submit they are ripe for argument before the Court on January 24, 2008:

- What is the appropriate method for valuing PBGC's Amended Claim for unfunded benefit liabilities, as defined under 29 U.S.C. § 1301(a)(18)? The Liquidating Trust contends that the "Prudent Investor Rate" should be used to value this claim. PBGC contends that the applicable non-bankruptcy law, ERISA and PBGC's regulations, should be used.
- Whether the PBGC's Amended Claims for due and unpaid minimum funding contributions under 29 U.S.C. § 1362(c) are entitled to administrative expense priority under 11 U.S.C. § 503(b)(1)(B).
- Whether the PBGC's Amended Claims for due and unpaid minimum funding contributions under 29 U.S.C. § 1362(c) are entitled to administrative expense priority under 11 U.S.C. § 503(b)(1)(A).
- Whether Amended Claim No. 791 for termination premiums under 29 U.S.C. § 1306(a)(7) is entitled to administrative expense priority as a "tax."
- Whether the Amended Claims for due and unpaid minimum funding contributions under 29 U.S.C. § 1362(c) are entitled to treatment as priority tax claims under 11 U.S.C. § 507(a)(8).

2. It is the USACM Trust's and the PBGC's belief that resolution of the following issues requires further discovery, and the parties respectfully submit that the following should not be argued before the Court on January 24, 2008 but rather that a hearing should be set to address them at a later date:

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- The applicable prudent investor rate for calculating the amount of the PBGC's claim for unfunded benefit liabilities, if the Court rules that the prudent investor rate applies.
- Whether the amount of the PBGC's claim for unfunded benefit liabilities should be reduced by the accrued benefits of certain insiders under the Pension Plan, if the insiders committed fiduciary breach with respect to the Pension Plan. The Liquidating Trust contends that under ERISA these benefits should be reduced as a result of breaches of fiduciary duties with respect to the Pension Plan, resulting in the reduction of PBGC's claim. PBGC contends that any action for breach of fiduciary duty against the certain insiders must be commenced by PBGC in district court, is subject to PBGC's prosecutorial discretion, and is irrelevant to its claims for unfunded benefit liabilities against the Liquidating Trust.
- To the extent that the court finds that the PBGC's claims for unfunded benefit liabilities should not be reduced by an amount equal to the accrued benefit of certain insiders under the Pension Plan, whether such claims should be subordinated to the claims of the creditor beneficiaries of the USACM Trust pursuant to the terms of the confirmed Plan of Reorganization. The Liquidating Trust contends that such subordination is appropriate. The PBGC disagrees.
- The amount of the post-petition benefit accruals under the Pension Plan which are entitled to administrative priority under 11 U.S.C. § 503(b)(1)(A).
- The amount of unfunded benefit liabilities entitled to administrative expense priority as a tax under 11 U.S.C. § 503(b)(1)(B).
- The amount of due and unpaid minimum funding contributions entitled to administrative expense priority under 11 U.S.C. § 507(a)(5) arising within 180 days immediately prior to the petition filing date.

DATED: January 10, 2008

LEWIS AND ROCA LLPBy: /s/ RC (#6593)Susan M. Freeman, AZ 4199 (*pro hac vice*)
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-and-

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**PENSION BENEFIT GUARANTY
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